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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,206	09/14/2006	Irina Velikyan	PZ0333	6320
36335	7590	09/05/2007		
GE HEALTHCARE, INC. IP DEPARTMENT 101 CARNEGIE CENTER PRINCETON, NJ 08540-6231			EXAMINER PERREIRA, MELISSA JEAN	
			ART UNIT 1618	PAPER NUMBER
			MAIL DATE 09/05/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/552,206	<b>Applicant(s)</b> VELIKYAN ET AL.	
	<b>Examiner</b> Melissa Perreira	<b>Art Unit</b> 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

Claims 1-19 are pending in the application. Any objections and/or rejections from previous office actions that have not been reiterated in this office action are obviated.

#### ***Double Patenting***

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 8-12 and 14 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1,3-7,11,13,15 of copending Application No. 10/552,134 as stated in the office action mailed 3/5/07. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented. The rejection is maintained as the claims have not been amended and the copending application 10/552,134 has not been abandoned.

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct

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from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1,2,6-14 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-14 of copending Application No. 11/358,681 as stated in the office action mailed 3/5/07. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented. The rejection is maintained as a terminal disclaimer has not been filed.

5. Claims 1-14 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of copending Application No. 10/552,134 as stated in the office action mailed 3/5/07. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented. The rejection is maintained as a terminal disclaimer has not been filed.

***New Grounds of Rejection***

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Griffiths et al. (WO03/059397A2) in view of Bottcher et al. (US 5,439,863) and further in view of Maier-Borst et al. (GB 2056471A).
3. Griffiths et al. (WO03/059397A2) discloses the method of producing a  $^{68}\text{Ga}$ -radiolabeled complex/ $^{68}\text{Ga}$ -labeled targeting agent for use in PET detection (p4, paragraph 2; p9, paragraph 1). The method of obtaining the  $^{68}\text{Ga}$  involves eluting  $^{68}\text{Ga}$  from a  $^{68}\text{Ge}/^{68}\text{Ga}$  titanium dioxide based in-house generator. The  $^{68}\text{Ga}$  is eluted from the titanium dioxide generator, which can be fitted with an anion-exchange membrane/Q5F cartridge (p14, paragraph 1) with acidic solution, such as 0.5-1N HCl (p7, paragraph 3; p8, paragraph 2; p12, paragraph 1). The method of producing a radiolabeled gallium complex involves reacting the solution of a peptide labeled macrocyclic chelate with the  $^{68}\text{Ga}$  diluted from the  $^{68}\text{Ge}/^{68}\text{Ga}$  titanium dioxide generator (p14, paragraph 1). The chelate-targeting agent conjugates can be compounded into kits that are ready to use and accept the  $^{68}\text{Ga}$  elute (p8, paragraph 3). The macrocyclic-chelating agent, such as DOTA or NOTA may be linked to a peptide that can target the site of a disease, thus generating a bifunctional chelating agent comprising a targeting

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vector which will be site-specific (p9, paragraph 1; p11, paragraphs 1 and 2). Griffiths et al. does not disclose the preparation of the chelate-targeting agent conjugates via microwave acceleration. Griffiths et al. also does not disclose an anion exchanger comprising  $\text{HCO}_3^-$  or more specifically one comprising an amine functional groups or one based on polystyrene-divinylbenzene.

4. Bottcher et al. (US 5,439,863) discloses the preparation of metal complex salts via microwave irradiation (column 3, line 45). The complexes are prepared from metal ions, such as those of the second and third main group, not excluding gallium and multitoothed chelating ligands that occupy more than one coordination site on the central metal atom (column 3, lines 55-59; column 4, lines 44-46). The ligands of the disclosure may include those with dioxime (N and O containing), etc. groups (column 5, lines 20-24). The use of microwave as the high-energy input allows for a continuous conversion, single-stage reaction with short reaction time and ease of separation of the formed complexes (column 4, line 19; column 5, lines 66+; column 6, lines 1-5).

5. Maier-Borst et al. (GB 2056471A) discloses the separation of  $^{68}\text{Ga}$  for its parent nuclide, germanium-68, with water via passing the eluant from a generator column into an anion exchanger comprising quaternary ammonium groups incorporated in a matrix of styrene and divinylbenzene and washing the anion exchanger with water (p4, lines 44-48).

6. At the time of the invention it would have been obvious to produce a  $^{68}\text{Ga}$ -DOTA-oligonucleotide complex (see disclosures above) for use as a PET tracer via the production of  $^{68}\text{Ga}$  from a  $^{68}\text{Ge}/^{68}\text{Ga}$  titanium dioxide generator as disclosed by Griffiths

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et al. The microwave synthesis technique for the method of producing metal-chelate complexes was known by Bottcher et al. thus, it would have been obvious to utilize (try) the microwave acceleration technique for a faster, more reproducible preparation of the  $^{68}\text{Ga}$ -DOTA-peptide complex, such as that of Griffiths et al. to generate a complex useful in the treatment or diagnosis of tumours with minimal side product formation. Microwave acceleration techniques have been utilized since the 1980's in a number of production methods for radioactive precursors and radiotracers labeled with positron-emitting nuclides. The microwave method is mostly associated with shortened reaction times and encompasses the microwave conditions of the instant claims. Since the microwave technique was known in the art (Bottcher et al.) one would have a reasonable expectation of success for preparing radiotracer via labeling reactions with this improved microwave technique.

7. It would have been obvious to utilize (try) an anion exchanger of Maier-Borst et al. to separate  $^{68}\text{Ga}$  from its parent nuclide since no chelating agent is required for separation and as Maier-Borst et al. is drawn to the same method of separation as the instant claims. It is known in the art to add a chelating agent, such as EDTA to elute  $^{68}\text{Ga}$  from an aluminum oxide exchanger. The disadvantage of forming the  $^{68}\text{Ga}$ -EDTA complex is that the complex has to be destroyed before further processing to obtain radiopharmaceutical agents which is time-consuming and expensive (see Maier-Borst et al. p1, lines 10-16).

**Conclusion**


No claims are allowed at this time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa Perreira whose telephone number is 571-272-1354. The examiner can normally be reached on 9am-5pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Hartley can be reached on 571-272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MP  
August 30, 2007

  
MICHAEL G. HARTLEY  
SUPERVISORY PATENT EXAMINER